

MINUTES OF THE  
ASSESSING STANDARDS BOARD  
Subcommittee on Former HB 547

**Draft**

**DATE:** August 27, 2015

**TIME:** 9:30 a.m.

**LOCATION:** Legislative Office Building – Room 305, 33 North State Street, Concord NH

**COMMITTEE MEMBERS:**

Betsey Patten, Public Member, Chairman  
Joseph Lessard, NHAAO, Towns >3,000  
Senator David Boutin - *Absent*

Eric Stohl, Municipal Official, Towns <3,000  
Representative Peter Schmidt

**MEMBERS of the PUBLIC:**

Representative Patrick Abrami  
Scott Dickman, DRA  
Cindy Brown, BTLA  
Robert Gagne, Manchester  
Meg Nelson, NHEC  
Mark Lambert, Unitil  
Jon Block, Unitil  
Denise Williams, Unitil  
Scott Dickman, DRA  
Scott Bartlett, Goffstown  
Len Gerzon, ASB  
Michael Licata, Liberty Utilities  
Steven Camerino, NHEC  
Cordell Johnston, NHMA  
Ellen Scarponi, FairPoint  
Teresa Rosenberger, Devine Millimet

Representative Mark Proulx  
Stephan Hamilton, DRA  
Andrea Curtis, George Sansoucy's Office  
Jim Wheeler, ASB  
Dena Lee DeLucca, NHEC  
Larry Brock, Unitil  
Keith Hanson, Unitil  
Heidi Kroll, Granite State Hydropower  
Kathy Temchack, Concord  
George Hildum  
Chris Boldt, DTC  
Karen Hanks, NHEC  
Cyndi Cusack, Sheehan Phinney Capitol Group  
Nancy Johnson  
Kevin O'Quinn, FairPoint  
David Cornell, DRA

Chairman Patten convened the meeting at 9:30 a.m.

**Minutes**

Mr. Stohl *motioned to accept the minutes of July 23, 2015, as amended*. Representative Schmidt *seconded the motion*. The amendments requested by Ms. Scarponi were made. Chairman Patten called the motion. *All Approved*.

Chairman Patten reported the minutes of the August 13, 2015, meeting are not complete.

**Survey Update**

Mr. Cornell reported the process of collecting and verifying the data is still on-going. The subcommittee will be meeting on September 2, 2015, at 1:30 p.m. at DRA to begin the process of analyzing the data. There have been a few towns added since the last meeting however there are still towns outstanding. The department will reach out to those towns that have not responded. As an extra step, the data will be available to towns to make sure that the data received was transferred correctly into our database.

The question was asked if the towns who have not responded are unaware of the request or are refusing to supply information due to litigation. Mr. Cornell stated it may be a combination of the two and the department can reach out to those communities and make a list of the communities who have not responded and why. He added that many of the communities in litigation have supplied information, some through their attorneys.

Another point was made that for those communities who have not responded, it may be due to the fact that they do not tax poles. It was requested that information be added to the report as well.

### Presentations

Chairman Patten stated the following presentations will be on the issue of HB 192, which was passed by the House and re-referred by the Senate. The change being the following additional statement to RSA 83-F:3, “[...] *The commissioner’s determination under this section shall be used only for the purposes of this chapter and shall not be used by either the local political subdivision or the utility in any application for abatement of tax under RSA 76:16 or any appeal thereof under RSA 76:16-a or RSA 76:17[...].*” This is the opportunity to hear both sides to allow the subcommittee to provide a recommendation to the full Assessing Standards Board (ASB) on HB 192.

#### ➤ Unitil

Mr. Mark Lambert, representing Unitil, gave a brief introduction and distributed a presentation. Mr. Jon Block, partner at Pierce Atwood LLP and head of the state and local tax group, representing Unitil on the matters of property tax in NH, began the presentation.

There have been cases in which the DRA’s value has been admitted and considered relevant and it is those cases that have given rise to HB 192. In their opinion, the legislature should not intervene and tell the courts what evidence should and should not be admitted in a case; the decision of how much weight to give the evidence should be left to the court. There are rules of evidence and an appeals system to further refine the process.

Chairman Patten disagreed with that statement stating having been in the legislature for 18 years, they had to react to the court on more than once occasion.

Mr. Block clarified that they do not believe the courts should micromanage how the legislature does its business and the legislature should not dictate to the courts what evidence is admissible. Evidence comes in various forms, including appraisals from the DRA who are an independent party and funded to provide these appraisals. To simply ignore this resource the state is providing does not seem to be a practical policy. The reason we think taxpayers want to offer these appraisals into evidence is because they provide a measure of consistency and uniformity that is lacking in town-by-town appraisals.

Mr. Lawrence Brock, Controller for Unitil, began his portion of the presentation to discuss the inconsistency in appraisals and what the impact is to the utility companies in NH, as well as, the economic impact on rate payers and taxpayers within the towns; the central point being the disparity in valuations among the towns, state and counties. They feel best way to alleviate the problem is to create standard rules and guidelines to provide a fair and equitable assessment process for utility properties.

Public utilities, like Unitil, exist to provide safe, reliable and cost effective electric and gas service to customers and are allowed to earn a reasonable profit through regulated rates. We believe that fair market value of a utility’s assets is closely tied to the value in which it is allowed to earn, which is the net book value (historical cost less accumulated depreciation). In other words regulation drives the fair market value of utility assets. For the last several years, the assessed value has been consistently higher than our net book value, which has caused us to pay property taxes on a number that is different than the fair market value on the assets on which we earn. In 2014, the company had \$250 million in assets but was taxed on an assessed value of \$300 million, which ultimately affects rate payers and taxpayers.

Mr. Stohl asked where the reported value comes from. Mr. Brock responded Unitil maintains fixed asset inventory records and an accounting system to track the costs of those systems installed in each town. The company then provides that financial and physical inventory information, including net book value, to each town assessor once per year.

A brief discussion took place about the poles. Mr. Brock stated the depreciation for the wooden poles would be 30 years. Each rate case requests a depreciation study which is completed and then depreciation rates are established with the utility commission. In general they could change by a small fraction but the utility asset lives are fairly standard in the industry.

Mr. Brock continued, the original cost to install the pole includes materials, labor and overhead which are captured on a construction work order. All the costs of the installation of the new pole and/or the de-installation of the old pole are captured on a construction work order so all the supplies and equipment to put on the pole, and then the labor to install, truck time and construction overhead are all components of our cost. All of the costs are reflected in the values submitted to the towns.

For utilities, it is very difficult for a pole to have an individual market value as it is part of a system; that is what gives it value. When we ask what the market value is of a pole in isolation, there may not be an answer because it does not have any value unless you are valuing the system it is a part of. That may be the case in telecom however it is not done for utilities because we are looking at what is the value of the system in town not pole by pole. A buyer will not care what the cost of putting a pole in is; they want to know how much money they will earn from the system which will then dictate how much they are willing to pay.

The question was asked if the land value could be the difference between the value Unitol provides and the value the town uses. Mr. Brock stated it could be.

The question was asked how the net book value for their system relates to the DRA's value; whether it is higher or lower or the same. Mr. Brock stated the DRA value comes in closer to the net book value than the towns, some higher, some lower. HB 192 would be foreclosing the option to use the DRA's number in appeals.

The impact of the valuation inconsistency among towns creates higher rates for customers; more frequent abatements of property tax; high utility costs and more frequent rate cases which are all passed on to the customers.

Mr. Brock summarized the second part of the presentation and stated a correction on the Consumer Price Index graph. The left axis is missing a digit; it should begin with 0 and go up in 5% increments up to 25%.

In summary, we don't feel the current system is fair and equitable or understandable and having no central, consistent standards of fair market valuation for utility property in NH is counter intuitive to the regulation in NH. We feel that central oversight is needed to achieve equity. This could be accomplished with the assistance of manuals or guidelines.

Utilities need understandable, predictable property tax valuations to use in rate making so the property tax burden is shared equitably and fairly among the utility customers. Unfair and disparate property tax treatment cause a utilities rates to increase for uneconomic reasons and that hurts efforts to attract new businesses and residents to NH.

The suggestion was made for the Assessing Standards Board (ASB) to take up this issue to create standards to bring about uniformity and equity in utility valuation. The ASB has done this in all other areas of valuation and now may be the time to approach this issue.

There are two possible solutions to consider. One, have a greater reliance on the DRA appraisals. The state already has a centralized assessment process set up and funded but we don't fully use it; only for one compartmentalized purpose. Those appraisals are there and become more relevant not less. Two, create standards, quality metrics, and statistics to increase uniformity, similar to what the ASB has created for residential properties; or a combination of the two.

Mr. Lessard clarified the measures the ASB created for residential and commercial property does not regulate assessors; they show how well they are doing. The overall standard for property is market value; those properties are measured by that. He asked if that is what Mr. Brock was suggesting.

Mr. Brock responded he was suggesting a combination. The DRA method is one way; create a standard using a range of percentage of net book value, for example. So that you don't have some towns with a value 250% above net book value and others with a value below 100% of net book value.

Another solution might be for the two sides to get together and form a compromise versus going through the legislature. Mr. Brock stated they are able to settle most cases which show a fatigue with litigation. He feels the ASB would be an appropriate venue to have this discussion.

Mr. Gagne cautioned that the ASB is not a place to go because litigation has not gone a certain way and he would not like to see it as another venue to argue a case. He suggested considering the information received today as well as reviewing the pertinent decisions in order to make an informed decision and to avoid becoming an additional venue off the courts.

Mr. Lessard asked Mr. Brock if the DRA appraisals were to be used, if they would agree that all of the DRA's files should be available in that litigation. Mr. Brock responded yes. If the taxpayer wants to avail himself the DRA's appraisal, I think the only way to succeed in doing that is by waiving the confidentiality provision.

➤ New Hampshire Electric Cooperative (NHEC)

Mr. Steve Camarino, President of the NHEC, began by stating NHEC is the second largest electric utility in the state with approximately 85,000 members (customers) within 115 communities. The members own the company; there are no shareholders; we don't pay dividends on a regular basis; we operate in the best interest of the people who use the system. All costs are covered by rates and we only charge rates that cover our costs. When the property tax bill is received, that amount is put into the budget and our rates are adjusted accordingly.

In the last four years, NHEC's municipal taxes have increased by 67%, a number that cannot be accounted for by additions to plant, inflation or normal increases in municipal budget. It is accounted for by the discrepancy in valuation techniques used among towns who value utilities. Recovering the 67% increase in cost is an issue as we cannot pass all of the increased costs through to our members. This significantly affects the service we can provide and the people we employ.

NHEC strongly shares Unitil's comments about the larger issue. With regards to HB 192, we feel you would be going in the absolute wrong direction. We don't want to use a value set by a state agency that the BTLA says we cannot use. We want to discuss how these values get set. We agree the courts should be able to ask for and consider relevant information and would like to see a process that is fair and consistent. It is important to understand what the members are paying for including litigation costs and lawyer fees as well as utilities. We would ask that HB 192 be voted down and to continue dialogue to find a solution.

The question was asked what information NHEC provides to the towns, if any. Ms. DeLucca stated towns generally request the information and are provided what they ask for, which in most cases is similar information provided by Unitil. NHEC does not argue the original cost of land and buildings; they question how the other pieces were being valued.

➤ Granite State Hydro Power Association (GSHPA)

Heidi Kroll, representing Gallagher Callahan & Gartrell, introduced herself as a registered lobbyist for Granite State Hydro Power Association. She provided a letter to the subcommittee at the August 13, 2015 meeting. She stated she was here to provide recognition that there are other types of entities that would be impacted by whatever decision is made with regards to the larger telecom and electric distribution companies.

The GSHPA are opposed to HB 192 and respectfully request this subcommittee to recommend to the legislature to find HB 192 inexpedient to legislate. The GSHPA is a voluntary, non-profit trade association for the small scale, independent hydro facilities in NH. Our members own manage and operate more than 60 hydro facilities located in about 43 towns in the state and are members of the NH small business community. Collectively there is about 50 megawatts of power. Typically the facilities that are members of our association are of 1 megawatt in size or less and there are none larger than 5 megawatts.

The state has a number of public policies including RSA 362-A and RSA 362-F, that strongly support renewable energy including small scale hydro. It's an emissions free, renewable, reliable, locally distributed source of electricity and it provides important economic and recreational benefits to the state, towns and cities. They pay local, state and utility property tax.

Our members work collaboratively and cooperatively with their host municipalities to reach an agreement on the fair valuation of their utility property, which they have found to be highly successful and effective versus going through timely and costly litigation which few of our members can afford. In the event that a member of our association would be elected no alternative but to appeal a municipal assessment, the association does believe that it is very important that all parties have the ability to file based on the well recognized valuation methodology that is used by the DRA. The DRA employs expert appraisers, they have extensive experience appraising utility property and the DRA's valuation approach provides a standardized approach to determine the value of each utility property. Many municipal appraisers themselves use the DRA work to value utility property in their town. HB 192 would deprive all parties from this important valuation resource. We believe and agree that the courts and the BTLA should be allowed to consider all relevant evidence of value including that from a neutral third party such as the DRA.

An additional point on behalf of the association, there are a number of laws on the books that promote and support our renewable resources in NH and these small scale hydro facilities are different from large scale power plants or the utility companies you have heard from in two ways. One, we do not have the economies of scale that some of the larger facilities have and two we don't have captive rate payers. We are not regulated in the same way; we don't have the ability to simply pass costs through rates automatically. Any cost of appeals, appraisals, and higher taxes all go to impacting the funds that small hydro facilities have to sustain their operations and help the state meet their goals for renewable energy. If HB 192 were to become law, it would simply become another barrier to their success in those areas. For those reasons, we respectfully request a finding from this board to not support HB 192.

Mr. Lessard asked both NHEC representatives and Ms. Kroll if the DRA's file should be used in litigation.

Ms. Meg Nelson (NHEC) responded, yes. They've had litigation on this issue and the courts and the board have ruled and the companies have agreed that if the appraisal is to be used it should be made available and the DRA's work file, particularly the materials that were supplied from NHEC and any communication between DRA and NHEC should be made available.

Ms. Kroll stated she was not an attorney and would be happy to take this question back to the association.

Mr. Brock added that if you are going to use someone's appraisal, you need to provide all of the information that the appraiser was provided and considered. If some information is confidential, the court can issue a protective order to protect that information from public disclosure but it should be provided.

Mr. Lessard added that the purposes of RSA 83-F, the DRA's appraisal and RSA 72:9, the town's appraisal, are defined to be completed differently, for separate purposes. The DRA values all property owned by a company in NH; not for a particular town. Then uses a percent allocation for each community based on information from the utility. What benefit is the appraisal of the entire company going to provide an appeal of a single assessment in a community? Is there a suggestion for a different "allocation" of that value than what is currently being used?

Mr. Brock responded that goes to the weight to be given by the court. The DRA's value at least provides a starting point of the value of the entire system. There are different ways to allocate and in many cases, a combination of ways is utilized.

Ms. Nelson added she agreed with Mr. Brock and further noted the issue of allocation is never appraisal, it is assessment judgment more than legal judgment. The allocation technique, which is used for equalization purposes to determine all communities share of the county and regional taxes, does result in a fair estimate of market value of the property in each community and that has been accepted as reasonable by the NH Supreme Court.

Ms. Kroll clarified that the hydro facilities are located in one community so there is no allocation issue for them.

Mr. Stohl asked Ms. Kroll if the net book value was also used in their determinations of value and whether or not the percentage of their taxation went up similar to other taxpayers in town. She stated she would ask the questions and forward the answers to the subcommittee.

➤ NH Municipal Association (NHMA) - Cordell Johnston and Chris Boldt - DTC

Mr. Cordell, representing the NHMA, stated the association did vote for the passage of HB 192. He restated the issue as simply being whether or not the DRA appraisal and the allocation of its values should be admitted in cases where utilities are challenged.

The municipalities are required to appraise property at its market value for purposes of the local property tax under RSA 75:1. RSA 83-F imposes a state-wide utility property tax, paid to the state, by valuing entire utility companies and allocating values to each municipality for the sole purpose of equalization and county tax. The question is whether that allocation, not appraisal, should be admitted in a utility appeal. The argument is no because it is not relevant.

The argument has been made that the legislature should not be telling the court what evidence it can or cannot consider; that it should be left to the court to consider the weight of the information. There are many existing statutes that do dictate what a court can and cannot consider in its decision, so this would not be unprecedented.

Mr. Boldt, representing Donahue, Tucker & Ciandella, began by stating HB 192 does not prevent a town from using a DRA value. It is to prevent the litigation and involvement of the DRA and its employees. He has received information provided by the company and the DRA's end product; what is missing is the DRA's evaluative process. Mr. Boldt cited several cases that have been heard at the BTLA and superior court. Requests for reconsideration have been filed with the BTLA awaiting a response; those through superior court are now at the NH Supreme Court.

The question was asked what would happen if the communities were not allowed to use the DRA value? Mr. Boldt responded that is why HB 192 did not go there; the issue is with the appeal process not the assessment process.

Representative Schmidt asked if Mr. Boldt if he believed the utility company's claim of disparity among towns with similar assets. Mr. Boldt responded the current system is properly aligned so that local control is being exercised. The methods of the cost, income and sales approaches are being taken into account and reconciled the same way houses and commercial properties are. He added his concern that if you provide one type of property with special treatment; that opens the door for anyone to request it.

➤ Stephan Hamilton - DRA

Mr. Hamilton began by stating we are not here to litigate, re-litigate or have an impact on current litigation. Due to cases being on appeal at the Supreme Court, it is premature for anyone to know what will happen.

The language in HB 192 contains some potentially significant unintended consequences. The size of utility companies varies as does the time it takes to value each one. Mr. Dickman, his staff plus additional staff are committed to processing the information used to value these properties. The information collected by the department includes confidential financial information, including tax returns, as well as requirements to keep the information confidential. However, when subpoenaed, there are protective orders in place unless a taxpayer waives the right of access to those records. In that situation, full access to the file is provided including a copy of the results of the spreadsheet. Once the appraisal is completed, one tax bill is sent to the taxpayer. That is the requirement of RSA 83-F.

Mr. Hamilton continued the department does use those values as the foundation of the equalization calculation. We go through that process of equalization following the same methodology that was reviewed in the appeals of Bow, Seabrook and Newington that the BTLA determined was a fair way to calculate the equalization of equalized value of communities in the presence of these utility properties. The Supreme Court validated the BTLA decision in that case so we are following the existing law of the land when we calculate the value and then make some allocation calculations.

The DRA's utility values are utilized by 30-35% of the communities within the state. Earlier this summer the BTLA ordered that the town may substitute the DRA's allocated utility value for its own determination value in a reassessment case, so in lieu of its own appraisal, the BTLA said the use of the DRA's allocated value was acceptable for the purposes of RSA 72, Taxation.

Again, looking at the language in HB 192, “[...] *The commissioner’s determination under this section shall be used only for the purpose of this chapter [...].*”, equalization is not bound by this chapter nor is the assessment of those taxes at the local level under Chapter 72, for the 30-35% of communities found using the DRA value. This is one significant unintended consequence.

The other unintended consequence pertains to the following language, “[...] *and shall not be used by either the local political subdivision or the utility [...].*” Thinking about that, if a town were able to use our value or even if they had used it in the past, and they were appealed, they would not be able to introduce the DRA’s valuation as evidence in defending themselves against abatement.

These two factors need to be addressed. The DRA does not like to be in court but to the extent that there is intent to limit the use of these appraisals in the appeal or even the local abatement process, we want to make sure that that doesn't interrupt the other natural and important uses of those valuations.

Mr. Lessard asked if there was a way to compare numbers to determine if there are reasons for the increases in valuation, other than utilities. Mr. Hamilton suggested reviewing the total equalized value reports and each community; the total market value estimate of the state both with and without utilities. In addition, review the total net appropriations or total taxes that need to be raised. Total net appropriation versus total equalized valuation with and without utilities may assist to clarify the issue.

The larger discussion is the lack of information that is perceived to be missing from the valuation. The final valuations for each utility in every community are available on the department website or by request. Information provided on the PA-20 submitted by the utility companies as well as supporting documents are provided as well as the final report but the spreadsheet including the “opinions” made within each appraisal, the granularity as to why certain numbers were used is not.

In summary, here are those who want the legislation in HB 192 because the DRA’s appraisal does not separately value the property within each community, they allocate a value based on the unit method, the appraisal of the entire utility company. Those who do not want the legislation want to be able to use the DRA’s valuation of the property within their community, in an appeal.

### **Meeting Schedule**

The next meeting will be held on Thursday, September 10, 2015, at 9:30 a.m. at the Legislative Office Building (LOB), Room 305.

Skip Sansoucy will be presenting. The survey update and subcommittee results will be discussed. Beginning with the September 24, 2015, meeting, the subcommittee will begin to deliberate in open session to get ready to bring a recommendation to the full Assessing Standards Board by the end of October. The following dates have been scheduled for October at the LOB Room 301.

- October 15, 2015
- October 29, 2015

The next full Assessing Standards Board meeting is scheduled for Friday, September 11, 2015.

Chairman Patten thanked all those who presented. The presentations submitted by Unitil and Mr. Boldt will be attached to the meeting minutes.

Mr. Lessard ***motioned to adjourn.*** Representative Schmidt ***seconded the motion.***

Chairman Patten adjourned the meeting at 12:35 p.m.

Respectfully submitted, Stephanie Derosier

NH Department of Revenue Administration – Municipal and Property Division

Documentation relative to the Assessing Standards Board may be submitted, requested or reviewed by:

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DRAFT